SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1967

Case No. 660

BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 etc.

Appellants,

against

JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York, *et als.*,

Appellees.

BRIEF OF THE NEW YORK STATE AFL-CIO, AS *AMICUS CURIAE*

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The New York State AFL-CIO respectfully prays that this Court accept this brief submitted as *Amicus Curiae* in support of the appellees.

The New York State AFL-CIO is a federated labor organization to which are affiliated over two thousand national and local labor unions operating in the State of New York which in turn represent more than two million working men and women.

The deep interest which labor unions have in assuring a sound education for the children of their membership needs no elaboration. That explains the application for permission to be heard.

ARGUMENT

At issue is the constitutionality of a New York statute which permits the public school authorities to lend books dealing with secular subjects to children in private schools, including parochial schools.

The Court of Appeals of the State of New York, which is the highest tribunal on questions of the State's constitution, has held that the statute does no violence to this document (20 N. Y. (2) 109). This, of course, was the really difficult question since the State's Constitution expressly provides that public property was not to be used, either directly or indirectly, in aid of any school under religious direction (Art. XI, Sect. 3).

The issue before this Court is much simpler. The United States Constitution contains no like detailed and specific ban. It prohibits the establishment of a religion by Congress. Even if this prohibition were to be imported into the Fourteenth Amendment, it would be an extreme distortion to say that the statute under review aims at or will aid in the establishment of any religious body by use of public funds.

There are hundreds of thousands of children who attend parochial schools in New York. The simple fact is that the parents of these children bear a double burden. They must pay for this private schooling and as taxpayers they contribute their share of the cost of the public school system. This statute undertakes only to ease part of this burden, and only a relatively minor part, by making text-books available on loan.

The proper education of children is a matter of prime concern to the public welfare. This holds true whether the children attend public or private schools. The children in

attendance at the parochial schools are just as much part of the future citizenry as are those in the public schools. If they be inadequately trained the damage will be just as great. The parochial schools will not close down if this statute be declared invalid. It will only mean that the parents who send their children to these schools will have that much less to spend on their education.

The State of New York and its municipalities now spend large sums of money in aid of the proper education of children, both intellectual and physical, without reference to the place where the education is being given. Public health services are made available to all children in need of them. Children in the parochial schools are given the same dental and medical care as those in the public schools. Scholarships and financial grants in aid of advanced studies are awarded without reference to the institutions in which these studies are to be pursued. In each of these programs, the matter of religion does not enter at all. The aid is being given to the child, as an individual, as a future participant in the work and life of our country. If a loan of secular text-books be held invalid because they will be studied in a parochial school, it is impossible to see how any of these other aids could stand up under attack.

CONCLUSION

It is respectfully urged that the holding of the Court of Appeals should be affirmed.

Respectfully submitted,

NEW YORK STATE AFL-CIO

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